

Sines, et al. v. Kessler, et al., 3:17CV72, 11/22/2021

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
CHARLOTTESVILLE DIVISION

\*\*\*\*\*

ELIZABETH SINES, ET AL., CIVIL CASE NO.: 3:17CV72  
NOVEMBER 22, 2021, 9:01 AM  
JURY TRIAL, DAY 21

Plaintiffs,

vs.

Before:  
HONORABLE NORMAN K. MOON  
UNITED STATES DISTRICT JUDGE  
WESTERN DISTRICT OF VIRGINIA

JASON KESSLER, ET AL.,

Defendants.

\*\*\*\*\*

APPEARANCES:

For the Plaintiffs: ALAN LEVINE, ESQUIRE  
COOLEY LLP  
1114 Avenue of the Americas, 46th  
Floor  
New York, NY 10036  
212.479.6260

DAVID E. MILLS, ESQUIRE  
COOLEY LLP  
1299 Pennsylvania Avenue, NW,  
Suite 700  
Washington, DC 20004  
202.842.7800

Court Reporter: Lisa M. Blair, RPR, RMR, CRR, FOCR  
255 West Main Street, Suite 304  
Charlottesville, Virginia 22902  
434.296.9284

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY;  
TRANSCRIPT PRODUCED BY COMPUTER.

Sines, et al. v. Kessler, et al., 3:17CV72, 11/22/2021

1 APPEARANCES CONTINUED:

2 For the Plaintiffs:

MICHAEL L. BLOCH, ESQUIRE  
ROBERTA A. KAPLAN, ESQUIRE  
Kaplan Hecker & Fink LLP  
350 Fifth Avenue, Suite 7110  
New York, NY 10118  
212.763.0883

5

6

7

8

KAREN L. DUNN, ESQUIRE  
WILLIAM A. ISAACSON, ESQUIRE  
Paul, Weiss, Rifkind, Wharton &  
Garrison LLP  
2001 K Street, NW  
Washington, DC 20006

9 For the Defendants:

10

11

12

DAVID L. CAMPBELL, ESQUIRE  
Duane, Hauck, Davis, Gravatt &  
Campbell, P.C.  
100 West Franklin Street, Suite 100  
Richmond, VA 23220  
804.644.7400

13

14

15

BRYAN J. JONES, ESQUIRE  
Bryan J. Jones, Attorney at law  
106 W. South Street, Suite 211  
Charlottesville, VA 22902  
540.623.6952

16

17

18

JAMES E. KOLENICH, ESQUIRE  
Kolenich Law Office  
9435 Waterstone Blvd., Suite 140  
Cincinnati, OH 45249  
513.444.2150

19

20

21

JOSHUA SMITH, ESQUIRE  
(Appearing via Zoom)  
Smith LLC  
807 Crane Avenue  
Pittsburgh, PA 15216  
917.567.3168

22

23

24

25

RICHARD SPENCER, PRO SE  
P.O. Box 1676  
Whitefish, MT 59937

Sines, et al. v. Kessler, et al., 3:17CV72, 11/22/2021

1 (Proceedings commenced, 9:01 a.m.)

2 THE COURT: Good morning.

3 Okay. First I'll say before we begin, I'll remind  
4 everyone that under Standing Order 2020-12 and 2013-8 the  
5 Court's prohibition against recording and broadcasting court  
6 proceedings remains in force. Attorneys, parties, and staff,  
7 and any members of the public or press accessing this  
8 proceeding today may not record or broadcast it. That means no  
9 photography, no using of video or audio recording device, no  
10 rebroadcasting, livestreaming, or otherwise disseminating any  
11 live or recorded video or audio on this proceeding.

12 The jury arrived about 8:30, and so they have started  
13 deliberating. I'm not going to bring them back into the  
14 courtroom.

15 You all saw the letter, I assume, that plaintiffs  
16 filed regarding the issue of transcripts?

17 MR. CAMPBELL: Yes, Your Honor. Has the Court  
18 received my response? I didn't file it. I couldn't get ECF to  
19 work last night, but I did email plaintiffs' counsel and the  
20 Court as well.

21 THE COURT: Okay. No, I did not see your response.  
22 If you'd like to summarize it, that will be all right.

23 MR. CAMPBELL: Sure. Your Honor, basically just that  
24 we believe that doing this transcript would open Pandora's box  
25 and would encourage the jury to do that with everything they're

Sines, et al. v. Kessler, et al., 3:17CV72, 11/22/2021

1 having difficulty recalling of nearly four weeks of testimony.

2           And then I quote the Fourth Circuit as well and say  
3 that the Court didn't respond with a preference. The Court  
4 just answered the jury's request with -- consistent with the  
5 Court's earlier instructions. And there hasn't been, as the  
6 Fourth Circuit requires, a reasonably well-focused request for  
7 a specific answer to be read from the transcript. That's not  
8 what they asked for. They just asked for the whole transcript.  
9 So if they do come back and make any reasonably well-focused  
10 request, I think the Court should possibly reconsider its  
11 ruling. But at this time having already ruled -- or not ruled,  
12 but having already responded to the jury, and there being no  
13 additional -- any specific or reasonably well-focused question  
14 in response following them being told that they couldn't have  
15 the transcript, I think the Court should leave it as it is.

16           THE COURT: Well, the only thing that concerns me is  
17 that the original instructions I gave them was sort of a  
18 blanket statement that it was not -- they could not obtain the  
19 transcript or a reading of it. And it concerns me. I would  
20 hate to get a hung jury and find out that it could have been  
21 resolved -- some issue could have been resolved if some issue  
22 had been cleared up for them.

23           MR. CAMPBELL: And Your Honor, I don't think, at  
24 least to my recollection -- and perhaps the court reporter or  
25 Your Honor's staff could find out -- I don't believe there was

Sines, et al. v. Kessler, et al., 3:17CV72, 11/22/2021

1 a blanket prohibition to read-backs. I think it was just as to  
2 providing them the transcript.

3 THE COURT: I think earlier when I first instructed  
4 the jury I think I told them that they could not -- we've  
5 indicated the transcripts are not available. I told them that  
6 in pretty uncertain terms.

7 So I'm inclined to grant the -- just tell them -- and  
8 this is what I would say: On Friday, you requested the  
9 transcript of the testimony of Defendant Matthew Parrott. I  
10 told you that the transcript was not available; however -- and  
11 then I would read the suggested -- if you have a specific  
12 question about a particular witness's testimony, or any portion  
13 of it, you may send the Court a note requesting that testimony,  
14 and the Court will consider reading back the requested  
15 testimony to the jury. I think that's fairly innocuous. I  
16 mean, I have the same concerns that we've got I don't know how  
17 many witnesses. I would hate to get bogged down asking for so  
18 much of this, but it's --

19 MR. KOLENICH: We don't disagree with that, Your  
20 Honor. But I think the emphasis needs to be on the specific  
21 request, rather than -- because if you say it like the way the  
22 Court just read it, they might interpret it as: Well, we did.  
23 We asked for the testimony of Matt Parrott, which is specific.

24 THE COURT: When I was reading that, I think I'll say  
25 testimony of a witness, instead of focusing on him.

Sines, et al. v. Kessler, et al., 3:17CV72, 11/22/2021

1 MR. KOLENICH: Maybe part of the testimony of a  
2 witness; otherwise, we might end up having to give them -- or  
3 them again requesting all the testimony of Matt Parrott, which  
4 took up half a day.

5 MS. KAPLAN: I think, Mr. Kolenich, the language we  
6 suggested, which I think the judge tends to read after the  
7 "however" line says a specific question about the testimony of  
8 a witness. I think we're in agreement on that.

9 Again, if what is hanging them up, Your Honor, is  
10 whether a particular witness was at a particular location on a  
11 particular day and they think that's the kind of thing that's  
12 appropriate for read-back --

13 THE COURT: I think the problem with the instructions  
14 I have given them so far, it seems like the door is slammed on  
15 any --

16 MS. KAPLAN: What's concerned us over the weekend,  
17 Your Honor, is they may not even know that read-backs exist.  
18 So that's what pushed them.

19 THE COURT: I'm going to make that adjustment, send  
20 them a note.

21 Anything else before we -- I mean, they're  
22 deliberating. We can just adjourn until we hear --

23 MR. KOLENICH: Nothing else, Your Honor.

24 THE COURT: -- until we get a message from Garcia.

25 MS. KAPLAN: Thank you, Your Honor.

Sines, et al. v. Kessler, et al., 3:17CV72, 11/22/2021

1 MR. CAMPBELL: Thank you, Your Honor.

2 (Recess, 9:07 a.m. To 10:13 a.m.)

3 THE COURT: Another question. You may want to listen  
4 to this. It's short, but I'm not sure we quite understand it.

5 "Does final jury instruction 32, which reads,  
6 'negligence defenses, including assumption of risk,  
7 contributory negligence, and sudden emergency are not valid  
8 defenses to any of the claims that plaintiffs bring against  
9 defendants. I instruct you to disregard these defenses when  
10 assessing defendants' liability.'"

11 The question is: "Does final jury instruction number  
12 32 apply only to financial liability"?

13 MS. KAPLAN: I'm stumped too, Your Honor.

14 THE COURT: I mean, it applies to everything. It's  
15 just not a defense. I don't know how to make it much clearer.

16 MS. DUNN: We would have thought this was the  
17 clearest instruction in the pile.

18 THE COURT: I could just say no, it applies to --  
19 applies to any of the claims. Are not valid defenses to any of  
20 the claims.

21 MR. LEVINE: Exactly.

22 THE COURT: Actually, no one has argued any -- I  
23 think the words may have popped up somewhere, but no one has  
24 argued negligence or assumption of the risk or anything.

25 MR. KOLENICH: A couple of questions were asked that

Sines, et al. v. Kessler, et al., 3:17CV72, 11/22/2021

1 might have amounted to assumption of the risk, Your Honor.

2 THE COURT: Hmm?

3 MR. KOLENICH: I think some of the defendants asked  
4 questions that were --

5 THE COURT: Right.

6 MR. KOLENICH: -- the same thing as assumption of the  
7 risk.

8 THE COURT: There was some implication that maybe if  
9 they stayed home they wouldn't have been hurt, but that's not a  
10 defense.

11 MS. DUNN: No, that's not.

12 What if you -- sorry, Your Honor. I was going to  
13 suggest what if you just said: The defenses do not apply to  
14 any of the claims?

15 THE COURT: Well, that's not changing the  
16 instruction, but it's about the only thing I know to say is  
17 something to that effect.

18 MS. DUNN: Yeah. I think you would need to say it  
19 doesn't apply to any of the claims that plaintiffs brings  
20 against defendants just for clarity, but the instruction  
21 doesn't saying anything more than that, really.

22 THE COURT: I mean, one thing you can say, I think  
23 what it means is the defendants are not to be considered  
24 responsible for their injuries.

25 MR. ISAACSON: The plaintiffs?



Sines, et al. v. Kessler, et al., 3:17CV72, 11/22/2021

1 THE COURT: The plaintiffs.

2 What did I say?

3 MR. ISAACSON: You said the defendants.

4 MR. KOLENICH: We're okay with that.

5 (Laughter).

6 THE COURT: The plaintiffs are not -- something to  
7 the effect that that's what it means; there are no defenses to  
8 the -- if they find the defendants liable, they don't go --  
9 they don't find -- there's no defense to it.

10 MS. KAPLAN: One thing they could be thinking  
11 about -- I'm just trying to speculate in my head -- they could  
12 be thinking it doesn't affect liability, but do they somehow  
13 discount the amount of damages for it, which obviously they  
14 can't do.

15 THE COURT: Well, that's what we were considering,  
16 whether it applied to -- we were talking about punitive  
17 damages.

18 MS. DUNN: I mean, just to give my own view, my own  
19 view is the safest thing to do is just repeat that it does not  
20 apply to any of the plaintiffs' claims against the defendants.

21 MS. KAPLAN: I think we all agree on that.

22 THE COURT: Like it says, "Does final jury  
23 instruction number 32 apply only to financial liability?"  
24 Answer: No, it applies to --

25 MR. ISAACSON: All of plaintiffs' claims.

Sines, et al. v. Kessler, et al., 3:17CV72, 11/22/2021

1 THE COURT: -- all of the claims.

2 MR. KOLENICH: Maybe the Court could say this is not  
3 a negligence case, so negligence defenses don't apply to any of  
4 the claims.

5 MS. KAPLAN: Okay. Well, maybe they're making  
6 progress. We can always hope.

7 THE COURT: Well, how about that: No, it applies to  
8 all of the claims of the plaintiffs. This is not a negligence  
9 case, and so there are no defenses.

10 MR. CAMPBELL: Well, not that there are no defenses.

11 MR. KOLENICH: No negligence defenses.

12 THE COURT: Well, I want to be sure. No negligence  
13 defenses.

14 MS. KAPLAN: We're okay with that, Your Honor.

15 MS. DUNN: Your Honor, I don't know if Mr. DeRise is  
16 writing it. Do you want us to write what you just said?

17 THE COURT: Are you getting it down?

18 Let's say it again. The answer is: No, it applies  
19 to all of the claims. This is not a negligence case and  
20 negligence defenses do not apply, which is in the heading of  
21 the instruction.

22 Okay?

23 MS. DUNN: Your Honor, instead of it applies to all  
24 the claims, can you say, no, it applies to all plaintiffs'  
25 claims against defendants, just because we don't --

Sines, et al. v. Kessler, et al., 3:17CV72, 11/22/2021

1 THE COURT: Okay. That's what the instruction  
2 says --

3 MS. DUNN: Thank you.

4 THE COURT: -- all plaintiffs' claims.  
5 Okay. Anything else?

6 MS. KAPLAN: That's it, Your Honor.

7 Well, we don't know. You would know, Your Honor, if  
8 there's anything else.

9 MR. LEVINE: I guess there isn't a 33? There isn't  
10 an instruction number 33?

11 THE COURT: We'll send them a note back.

12 MS. DUNN: Thank you, Your Honor.

13 (Recess, 10:20 a.m. to 11:31 a.m.)

14 THE COURT: Another question. I'm going to pass  
15 around the note after I read it to you.

16 "Are words are form of violence? (According to  
17 federal law)."

18 Are words are form -- I think it means: Are words a  
19 form of violence? (According to federal law).

20 I'm thinking about asking them what instruction  
21 they're talking about first, but I think they're probably  
22 talking about 17 or 30 or both.

23 MR. SPENCER: I would firmly say "no" to the answer  
24 are words a form of violence, according to many landmark  
25 Supreme Court cases.

Sines, et al. v. Kessler, et al., 3:17CV72, 11/22/2021

1 THE COURT: Well, it looks like they're quoting  
2 something out of an instruction to me because -- which, I mean,  
3 I think you're right. Words are not a form of violence. But  
4 in instruction -- for instruction 30, the fact that an  
5 agreement to engage in illegal conduct necessarily takes,  
6 quote, "the form of words," end quote also does not confer upon  
7 it, or upon the underlying conduct, protection under the First  
8 Amendment.

9 MR. KOLENICH: Perhaps the answer, Your Honor, should  
10 be: Words alone are not a form of violence.

11 MS. KAPLAN: I don't have a search to pull up. Is  
12 the only use of the word "words" in that -- is that 30?

13 MS. DUNN: That's 30. That's the last paragraph of  
14 the First Amendment instruction.

15 MR. SPENCER: Your Honor, I might be wrong, but I  
16 think they're looking at the big picture on this one. I don't  
17 think it's about that. I think everyone would agree that you  
18 can't use words to embezzle money from your company and that's  
19 somehow protected by the First Amendment. I think this is a  
20 big picture issue they're contemplating.

21 THE COURT: I don't know what they're talking about.  
22 It seems to me they're talking about a specific instruction.

23 MR. LEVINE: Your Honor, I think directing them to  
24 the particular instructions, and either reading it to them in  
25 open court or directing them to it is a way to go here, and not

Sines, et al. v. Kessler, et al., 3:17CV72, 11/22/2021

1 trying to answer it literally, but to give them the instruction  
2 in the context.

3 MR. CAMPBELL: Well, I think the response should  
4 include the literal answer no, certainly, even if something  
5 else is added.

6 MR. SPENCER: Yes.

7 MS. KAPLAN: I don't think there's any legal answer.  
8 I don't think that's a legal answer.

9 THE COURT: They're talking about is it federal law?  
10 I don't know what --

11 MS. KAPLAN: I don't think you can find federal law  
12 the definition of words, not violence. I don't think anything  
13 exists.

14 MR. SPENCER: Again, I think this is a big-picture  
15 issue. You have to express that.

16 THE COURT: We don't know what they're talking about,  
17 frankly. That's the problem.

18 MR. SPENCER: I can't know that, but I can sense  
19 that.

20 MR. KOLENICH: The Court told them that the abject  
21 arguing in favor of violence standing alone is not -- it is  
22 First Amendment protected. So they have to find something  
23 besides rhetoric or words. It has to be words that form a  
24 conspiracy. If they want to refer them just to the jury  
25 instructions, I think there wouldn't be a question if they

Sines, et al. v. Kessler, et al., 3:17CV72, 11/22/2021

1 understood the jury instructions.

2 MS. DUNN: Your Honor, there is -- the First  
3 Amendment instruction gives the instruction in this area of  
4 conversation. So we would propose pointing them to this  
5 instruction and seeing if they still have a question after  
6 that.

7 THE COURT: Say that again now.

8 MS. DUNN: Because the First Amendment instruction,  
9 number 30, addresses this issue, we would propose directing  
10 them to this instruction and then seeing if they have  
11 additional questions after that.

12 THE COURT: I think this comes right out of that  
13 instruction.

14 MS. KAPLAN: We agree.

15 THE COURT: That's why I would ask them --

16 MS. KAPLAN: I could be wrong, Your Honor, but my  
17 recollection is that's the only time the word "words" is used  
18 in the entire set of instructions. So it makes sense.

19 THE COURT: I could just say I refer you to  
20 instruction number 30.

21 MR. LEVINE: Exactly.

22 THE COURT: And that's the best answer I can give  
23 you.

24 MR. SPENCER: I agree with Mr. Campbell, though. If  
25 this is a philosophical question, I think it can be answered,

Sines, et al. v. Kessler, et al., 3:17CV72, 11/22/2021

1 or at least you could offer guidelines for answering it. The  
2 answer is no.

3 THE COURT: I don't think it's philosophical. I  
4 think they're asking specifically about the instruction.

5 MR. LEVINE: Your Honor, the good thing about your  
6 instructions is that they're balanced. You give each side  
7 during the course of an instruction. And so if Your Honor  
8 directs them to the relevant instruction, then it's a very  
9 balanced presentation to answer the question.

10 THE COURT: Well, is the First Amendment instruction  
11 30?

12 MS. KAPLAN: 30, Your Honor.

13 THE COURT: Do you all think that that's confusing?  
14 I mean, if you read it, it looks to me like it speaks for  
15 itself.

16 MS. KAPLAN: I mean, the one thing -- with respect to  
17 Mr. Spencer, the one thing that Your Honor shouldn't do is  
18 involve itself in philosophical debate about abstract words and  
19 what they mean, because it's all in the context of this case.

20 MR. KOLENICH: Your Honor, the technical answer to  
21 the question is no. You could just say no.

22 MS. KAPLAN: I don't think it is a technical answer  
23 to the question.

24 MS. DUNN: It's not. I mean, my concern, Your Honor,  
25 is that going beyond this is going to invite some sort of

Sines, et al. v. Kessler, et al., 3:17CV72, 11/22/2021

1 error. Like we have an instruction that speaks to this issue  
2 directly and it's a lawful instruction. And I think if we  
3 start mutating this, it may create problems.

4 MR. CAMPBELL: Are you taking the position words are  
5 a form of violence?

6 MR. LEVINE: The instruction itself clarifies it.

7 MR. KOLENICH: I think you should at least say the  
8 words have to form a conspiracy, an agreement.

9 MR. SPENCER: Yes.

10 MR. KOLENICH: Words alone are not violence. Words  
11 have to amount to something more than -- that seems to be what  
12 they're asking. In other words, if the defendants walk by  
13 chanting things, is that violence? I think pretty clearly it  
14 is not.

15 MS. KAPLAN: But the problem with that is that brings  
16 in almost every other instruction in the case, because if they  
17 have words and they form a conspiracy and there is an overt act  
18 of violence in the conspiracy, then they're liable for the  
19 conspiracy. So I don't think that works.

20 MR. KOLENICH: So the words have to amount to a  
21 conspiracy because words alone --

22 MS. KAPLAN: But that's already in the conspiracy  
23 instruction.

24 MR. KOLENICH: Well, then at least refer them to more  
25 than 30. Refer them to the conspiracy instruction as well.



Sines, et al. v. Kessler, et al., 3:17CV72, 11/22/2021

1 MS. DUNN: I think the problem is there is -- there  
2 are other claims in this case. And making things up at this  
3 point is going to confuse the issue. I mean, there are claims  
4 about intentional infliction of emotional distress. There are  
5 claims about the underlying hate crime statute under Virginia  
6 law. This is an area that, if we do not want to try this case  
7 again, I do not recommend going down this road.

8 MR. KOLENICH: Can we at least give them 30 and then  
9 whatever -- what is it, 13 is the --

10 MS. DUNN: No. I would give them 30. They're not  
11 shy about asking questions. You know, if they have more  
12 questions --

13 THE COURT: What is -- I was looking at 17.  
14 The word "form" is not anywhere on the jury verdict,  
15 is it?

16 MS. KAPLAN: I don't recall it being there.

17 MS. DUNN: I don't see it anywhere. We could search.

18 THE COURT: I don't know why it would be.

19 MS. DUNN: I only see it in instruction 30.

20 THE COURT: I just think instruction 30 covers it. I  
21 don't know why -- I mean, it refers --

22 MS. KAPLAN: We agree, Your Honor.

23 THE COURT: -- to the First Amendment. It refers to  
24 the United States Constitution.

25 MR. SPENCER: I agree. And I think that's why

Sines, et al. v. Kessler, et al., 3:17CV72, 11/22/2021

1 they're asking the question, because it's a bigger thing. This  
2 is something that --

3 THE COURT: But we're not trying a bigger thing.  
4 We're trying a case based on the facts in this case.

5 MR. SPENCER: I agree. But everything is within a  
6 bigger philosophical concept. Even the smallest thing,  
7 the fall of a sparrow, is within a bigger, wider context.

8 THE COURT: Well, that's --

9 MR. KOLENICH: Your Honor, we --

10 MR. SPENCER: They're asking about that. They're  
11 sincerely asking about it.

12 MR. KOLENICH: We did request an instruction that any  
13 advocacy of violence has to be advocating imminent violence in  
14 order to violate the First Amendment, and I'm not sure the  
15 Court gave that instruction. So I think this question kind of  
16 gets back to that, which is certainly correct First Amendment  
17 law. Advocacy of violence, violent rhetoric, has to lead to  
18 imminent violence, or else it's protected.

19 Now, at the same time, it's true that if this  
20 advocacy amounts to a conspiracy, it's not protected, which the  
21 Court has already told them. But there is a missing piece  
22 here.

23 MR. CAMPBELL: It's still not a form of violence.

24 MR. KOLENICH: Right. They ask is the words  
25 themselves a form of violence. And I don't think that --

Sines, et al. v. Kessler, et al., 3:17CV72, 11/22/2021

1 MS. KAPLAN: Your Honor, what I would respectfully  
2 suggest is this area is perhaps one of the most complicated  
3 areas -- as Your Honor knows -- of federal law and  
4 constitutional law. We have instructions in this case. We  
5 should stick with the instructions in this case. As my  
6 colleague, Karen, said, getting out of that, particularly in  
7 the area of the First Amendment, is always treacherous. They  
8 have an instruction. They should look at the instruction.

9 THE COURT: What about the thing that you say I  
10 didn't instruct on imminent violence.

11 MR. KOLENICH: I don't think it's in the  
12 instructions, Your Honor.

13 MS. DUNN: It's not, because this is not an  
14 incitement case. We're not talking about that.

15 I think there is a lot of peril in starting to talk  
16 more expansively about this area. We are going to invite a  
17 problem, in my view.

18 THE COURT: All right. You all may sit down or go  
19 somewhere. I'm going to -- I want to take a look at this. I  
20 mean, what I'm thinking right now is saying: I'm referring you  
21 to instruction 30. If that doesn't answer your question, let  
22 us know what instruction you're talking about.

23 MS. KAPLAN: Sounds right to us, Your Honor.

24 MS. DUNN: Thank you, Your Honor.

25 (Pause.)

Sines, et al. v. Kessler, et al., 3:17CV72, 11/22/2021

1 THE COURT: This is what I told you I was going to  
2 do: "I'll refer you to instruction number 30. If that does  
3 not answer your question, which instruction are you referring  
4 to?"

5 (Recess, 11:51 a.m. to 12:09 p.m.)

6 THE COURT: This one says, "If we cannot come to a  
7 unanimous decision on the first three claims, do we still  
8 decide on Claims 4, 5, and 6"?

9 I wouldn't read a whole lot into that, just given the  
10 way the questions have come. Obviously, they do have to  
11 consider 4, 5, and 6; but I don't want them to stop at 1, 2,  
12 and 3 yet.

13 MR. CAMPBELL: I would definitely agree, yes, Your  
14 Honor, we would ask that they consider 4, 5, and 6 regardless,  
15 of course.

16 THE COURT: I don't understand why there is any  
17 misunderstanding about that. I think I'm going to tell them  
18 they must continue to try to reach a unanimous decision on all  
19 six counts.

20 MS. KAPLAN: We agree, Your Honor.

21 THE COURT: Because I think there's too much into it  
22 not to ultimately have to go for the *Allen* charge. I don't  
23 want to give it now.

24 MS. KAPLAN: Okay. Thank you, Your Honor.

25 (Recess, 12:11 p.m. to 4:41 p.m.)

Sines, et al. v. Kessler, et al., 3:17CV72, 11/22/2021

1 THE COURT: The jury is coming back tomorrow, and I'm  
2 just going to call them in to tell them to not talk about the  
3 case.

4 MS. KAPLAN: Okay.

5 THE COURT: So you all can take a seat.

6 **(Jury in, 4:43 p.m.)**

7 THE COURT: Members of the jury, I want you to know  
8 we continue to appreciate your continued hard work. I know  
9 this is not easy, but the reason I called you in is I have to  
10 tell you every day when you're released not to discuss the case  
11 with anyone, or allow anyone to discuss it with you or remain  
12 within hearing of anyone discussing it. Do not read or watch  
13 or listen to anything outside the courthouse concerning the  
14 case. And so you're excused at this time.

15 Thank you.

16 **(Jury out, 4:44 p.m.)**

17 (Proceedings adjourned, 4:44 p.m.)  
18  
19  
20  
21  
22  
23  
24  
25

Sines, et al. v. Kessler, et al., 3:17CV72, 11/22/2021

C E R T I F I C A T E

I, Lisa M. Blair, RMR/CRR, Official Court Reporter for the United States District Court for the Western District of Virginia, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a correct transcript of the proceedings reported by me using the stenotype reporting method in conjunction with computer-aided transcription, and that same is a true and correct transcript to the best of my ability and understanding.

I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

/s/ Lisa M. Blair

Date: November 22, 2021